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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/578,001	05/24/2000	C. Daniel McClain	ROWL-9955	4546

23123 7590 12/27/2006

SCHMEISER OLSEN & WATTS
18 E UNIVERSITY DRIVE
SUITE # 101
MESA, AZ 85201

EXAMINER	
SANDERS, KRIELLION ANTIONETTE	
ART UNIT	PAPER NUMBER
1714	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/27/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	09/578,001	MCCLAIN ET AL.	
	Examiner	Art Unit	
	Kriellion A. Sanders	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 October 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *89, 92, 101, 104, 107, 110, 113, 116, 119, 122, 125, 128, 134, 143, 146, 149, 152, 155, 158, 161,164, 167, 170, 173, 176, 179, 182, 191, 194, 197, 200, 203, 206, 208, 210, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 238, 240, 242, 244, 246, 248, 250, 252, 254, 255, 256, 258, 260, 261, 262, 265, 266, 267, 268-276, 279-285, 307, 309, 310, 312 and 327* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *89, 92, 101, 104, 107, 110, 113, 116, 119, 122, 125, 128, 134, 143, 146, 149, 152, 155, 158, 161, 64, 167, 170, 173, 176, 179, 182, 191, 194, 197, 200, 203, 206, 208, 210, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 238, 240, 242, 244, 246, 248, 250, 252, 254, 255, 256, 258, 260, 261, 262, 265, 266, 267, 268-276, 279-285, 307, 309, 310, 312 and 327* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 89, 92, 101, 104, 107, 110, 113, 116, 119, 122, 125, 128, 134, 143, 146, 149, 152, 155, 158, 161, 164, 167, 170, 173, 176, 179, 182, 191, 194, 197, 200, 203, 206, 208, 210, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 238, 240, 242, 244, 246, 248, 250, 252, 254, 255, 256, 258, 260, 261, 262, 265, 266, 267, 268-276, 279-285, 307, 309, 310, 312 and 327 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 7,065,429. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent claims the production of a paint from a plurality of premixed aqueous compositions comprising a pigment composition, a dispersant-thickening agent and a low resin content binder. The patented process would necessarily result in the presently claimed compositions. See col. 14, lines 62-67.

Claims 89, 92, 101, 104, 107, 110, 113, 116, 119, 122, 125, 128, 134, 143, 146, 149, 152, 155, 158, 161, 64, 167, 170, 173, 176, 179, 182, 191, 194, 197, 200, 203, 206, 208, 210, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 238, 240, 242, 244, 246, 248, 250, 252, 254, 255, 256, 258, 260, 261, 262, 265, 266, 267, 268-276, 279-285, 307, 309, 310, 312 and 327 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-29 of copending allowed Application No. 10/663,164. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent claims the production of a paint from a plurality of premixed aqueous compositions comprising a pigment composition, a dispersant-thickening agent and a low resin content binder. The patented process would necessarily result in the presently claimed compositions.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 208, 210, 214, 216, 218, 220, 222, 224, 226, 228, 230, 232, 234, 238, 240, 242, 244, 246, 248, 250, 252, 254, 255, 256 and 258 are rejected under 35 U.S.C. 103(a) as being unpatentable over are rejected under 35 U.S.C. 103(a) as being unpatentable over Brock et al, US Patent No. 5,672,649 in view of Hopper, US Patent No. 3,758,432 and Broome et al, US Patent No. 6,074474.

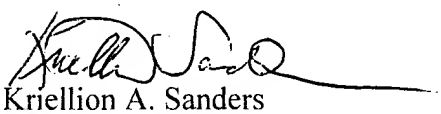
Brock et al discloses the presently claimed invention with the exception being that the present invention recites diverse thickeners, dispersants, solids content, PVC and Stormer viscosity as compared to those suggested by Brock et al. The use of dispersants in order to disperse pigments and prevent settling of pigments and of thickeners in order to obtain workable paint compositions having a proper viscosity is well known in the art as taught by Hopper and Broome et al. (See the Tables in examples 1-3 and see Broome et al, Tables 1-3). Hopper and Broome et al each also teach applicant's solids content, PVC and Stormer viscosity. (Again see Tables 1-3 in each of Hopper and Broome et al).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the art well known thickeners and/or dispersants of Hopper or Broome et al in the compositions of Brock et al for their art-recognized purposes of dispersing pigments and preventing the settling of pigments and thickeners in order to obtain workable paint compositions having an acceptable viscosity. The presently claimed solids content, PVC and Stormer viscosity is considered an inherent or obvious property of the paint compositions disclosed by Brock et al. Applicant's recited Brookfield viscosity is an inherent property of the binder modules taught by Brock et al (see the binder modules taught in Examples 4 and 5 of Brock et al). In the absence of a showing of unexpected results, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have determined an appropriate Brookfield viscosity for the binders of Brock et al to produce the most optimal paint product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kriellion A. Sanders whose telephone number is 571-272-1122. The examiner can normally be reached on Monday through Thursday 8:30am-7:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kriellion A. Sanders
Primary Examiner
Art Unit 1714

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